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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. [redacted] 85

CITIES SERVICE GAS COMPANY, a Corporation,
Appellant,

VERSUS

STATE CORPORATION COMMISSION OF KANSAS, HARRY SNYDER, JR., Chairman, RICHARD C. BYRD and JOHN I. YOUNG, as Members of Said Commission, and Their Respective Successors in Office,

Appellees.

ON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF KANSAS

JURISDICTIONAL STATEMENT

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February, 1957

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Whether the State Corporation Commission of Kansas has the jurisdiction and authority, in face of the provisions of the Natural Gas Act (15 U.S.C.A. 717, 52 Stat. 821), and the jurisdiction of the Federal Power Commission thereunder, to fix a minimum price for natural gas produced and sold in the Kansas-Hugoton Gas Field by producers therein to appellant, a natural gas company, either at the wellhead or in said field after production and gathering thereof has been completed, or both, for transportation and resale in interstate commerce, or to prohibit the production of such natural gas by said producer, or inflict severe penalties therefor, if the price fixed by such order for such gas is not paid by the producer or taker thereof to the producer?	4
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In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. .....

CITIES SERVICE GAS COMPANY, a Corporation,
Appellant,

VERSUS

STATE CORPORATION COMMISSION OF KANSAS, HARRY SNYDER, JR., Chairman, RICHARD C. BYRD and JOHN I. YOUNG, as Members of Said Commission, and Their Respective Successors in Office,

Appellees.

ON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF KANSAS

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Court of the State of Kansas affirming the judgment of the District Court of Finney County, Kansas, upholding and sustaining the validity of a minimum gas price-fixing order of the State Corporation Commission of Kansas for the Kansas-Hugoton Gas Field fixing a minimum price of eleven cents (11¢) per Mcf. for natural gas produced and sold in said field as applied to the operations of appellant Cities Service Gas Company in its purchases of gas from producers therein, which judgment was entered in this

action on the 8th day of December, 1956, and became final on the 4th day of January, 1957, by the Court's denial, without opinion, of appellant's motion for rehearing. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Kansas is reported in 180 Kan. 454, 304 P.2d 528. No opinion was rendered by the District Court of Finney County, Kansas. The opinion of the State Corporation Commission of the State of Kansas in support of said gas price-fixing order for the Kansas-Hugoton Field is not officially reported. Copies of the opinion of the Supreme Court of Kansas and the opinion of the State Corporation Commission of Kansas in support of its said minimum gas price-fixing order are attached hereto as Appendices A and B respectively.

JURISDICTION

This action was originally brought in the District Court of Finney County, Kansas, by appellant against appellees as authorized by G. S. Kansas 1949, 55-707 and 606,[1] to have judicially reviewed and set aside an order of the State Corporation Commission of Kansas, having the force of a statute,[2] issued December 2, 1953, effective January 1, 1954,

---

[1] Statutes set forth in Appendix E and D hereto.

[2] *Stratton* v. *Atchison T. & S. F. Ry. Co.*, 118 Kan. 673, 679, 236 Pac. 831; *White Eagle Oil Co.* v. *State Corporation Comm.*, 168 Kan. 548, 549, 214 P.2d 337.

at 12:01 a.m., fixing a minimum price of eleven cents (11¢) per Mcf. for natural gas produced and sold in the Kansas-Hugoton Gas Field as applied to the operations of appellant in its purchases of gas from producers therein. The judgment of the District Court of Finney County, Kansas, affirming and sustaining said minimum gas price-fixing order as applied to the operations of appellant was entered on May 14, 1956. Such judgment was appealed to the Supreme Court of the State of Kansas and on December 8, 1956, that Court, being the highest court of such state, affirmed the judgment of the District Court of Finney County, Kansas, upholding and sustaining the validity of said gas price-fixing order, as applied to appellant and its operations in said field, which judgment became final on January 4, 1957. The jurisdiction of the Supreme Court to review this decision and final judgment of the Supreme Court of Kansas by direct appeal is conferred by 28 U.S.C.A. 1257(2), 62 Stat. 929. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

—*Natural Gas Pipe Line Company of America* v. *Corporation Commission of the State of Oklahoma, Natural Gas Pipe Line Company of America* v. *Panoma Corporation et al.*, 349 U.S. 44, 99 L. Ed. 866;

Cities Service Gas Company v. *Peerless Oil & Gas Company et al.*, 340 U.S. 179, 95 L. Ed. 190.

QUESTION PRESENTED

Whether the State Corporation Commission of Kansas has the jurisdiction and authority, in face of the provisions of the Natural Gas Act (15 U.S.C.A. 717, 52 Stat. 821), and the jurisdiction of the Federal Power Commission thereunder, to fix a minimum price for natural gas produced and sold in the Kansas-Hugoton Gas Field by producers therein to appellant, a natural gas company, either at the wellhead or in said field after production and gathering thereof has been completed, or both, for transportation and resale in interstate commerce, or to prohibit the production of such natural gas by said producer, or inflict severe penalties therefor, if the price fixed by such order for such gas is not paid by the purchaser or taker thereof to the producer?

STATUTES INVOLVED

The material and essential provisions of the order of the State Corporation Commission of Kansas, having the force of a statute, under attack in this case, read:

> "That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on or after January 1, 1954, 12:01 A.M., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, leaseowners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per Mcf. (14.65 pounds psia.) at the wellhead until further order or orders of this Commission."

A complete copy of the entire order of said Commission is set forth in Appendix C hereto. There is also set forth in Appendix D hereto Article 7, Chapter 55, G.S. Kansas 1949, being 55-701 to 55-713 inclusive thereof, the Kansas Statutes upon which the Kansas Supreme Court said the minimum gas price-fixing order of said Corporation Commission was based and authorized.

STATEMENT

Appellant Cities Service Gas Company is a natural gas company as defined in the Natural Gas Act as amended (15 U.S.C.A. 717, 52 Stat. 821) and engaged generally in the business of producing and purchasing natural gas for transportation and sale in interstate commerce for resale under the provisions of said Act by means of an integrated pipeline system and facilities extending from Texas into and through Oklahoma and Kansas and into Missouri and Nebraska (R. 4-5, 6-14; Exhibit 34, R. 102).

In operating its interstate integrated pipeline system and as an integral part thereof, appellant has, among other things, entered into subsisting arms-length privately negotiated long term contracts with large and responsible producers in the Kansas-Hugoton Field for the purchase of natural gas delivered to it therein at prices substantially lower than that fixed by the Commission's price order (R. 6-14, 41-46, Exhibits 35, 36 and 37, R. 103, 104, 105).

In its operations in the purchase of gas in said Kansas-Hugoton Field, appellant Cities Service Gas Company purchases gas from producers therein delivered at the wellhead and also delivered at its pipeline in the field after produc-

tion and gathering thereof by the producer has ended (R. 7-9, Exhibits 35 and 36, R. 103, 104). Appellant owns no production in the Kansas-Hugoton Gas Field and purchases therein all the gas it takes therefrom (R. 9). Of the gas purchased by appellant in said Field during the year 1951, 55.4 per cent thereof was purchased at the wellhead, and 44.6 per cent thereof pipeline delivered in the field after production and gathering had been completed (R. 9). Of the total gas purchased by appellant in said Field during 1951, 73.74 per cent was treated (processed) before purchase for the extraction of hydrocarbons therefrom, and 26.53 per cent was not so treated (R. 9).

Appellant Cities Service Gas Company is a wholesaler of natural gas for resale in interstate commerce for ultimate public consumption (R. 7, 14-17, Exhibit 39, R. 107). Its principal markets are in Kansas, Missouri, and Oklahoma (R. 7, Exhibit 34, R. 102). Natural gas to operate its pipeline system and to supply its markets is obtained from four major sources of supply (R. 7, 25, Exhibit 34, R. 102). Most of its supply of gas for its markets comes from the Hugoton Field (R. 7). That is, the Oklahoma and Kansas portions of such Field. Approximately 31 per cent of appellant's total gas supply is produced in the Kansas-Hugoton Field (R. 25). Gas from this Field is transported by appellant eastward throught its 26-inch interstate pipeline extending from said Field to a point in Missouri near Kansas City, and southward from said Field through its 16-inch and 12-inch lines across the state line into Oklahoma where the gas enters its 20-inch line extending from the Oklahoma-Hugoton Gas Field eastward to Blackwell, Oklahoma,

thence across the state line to points in Kansas and Missouri (R. 102). (See copy system map, Exhibit 34, R. 102.)

In the operations of appellant's pipeline system, it is necessary to diffuse and commingle the gas from all its sources of supply in order to take care of all of its markets, not one particular market. No particular source of supply is dedicated to serve any particular area on the company's system (R. 25). Because of the commingling of gas from the various sources of supply of appellant at the numerous intersections of its pipelines (see map, Exhibit 34, R. 102), it would be almost impossible to identify gas from any particular source at the market ends of the pipeline. However, it was estimated by a witness and not contradicted that 48.5 per cent of the gas purchased by appellant in the Kansas-Hugoton Field was consumed in Kansas in the year 1952, which clearly discloses that over 50 per cent of the Kansas-Hugoton gas purchased by appellant in said Field was transported and sold for resale outside of the State of Kansas (R. 24-25).

Appellant being a natural gas company, all of such sales for resale are made under rates established and approved by the Federal Power Commission (R. 4, 6-14, 17). (See *Cities Service Gas Company* v. *Federal Power Commission*, 155 F.2d 694.) As a matter of fact, appellant's 26-inch pipeline extending from the Kansas portion of the Hugoton Field to Kansas City, Missouri, has been certificated as an interstate facility by the Federal Power Commission. (See *Re: Cities Service Gas Company*, Docket No. G-729, 6 F.P.C. Reports, p. 701, *et seq.*)

Notwithstanding the foregoing uncontradicted facts, the Corporation Commission of the State of Kansas after hearing, and on December 2, 1953, effective January 1, 1954, issued its said minimum gas price-fixing order for the Kansas-Hugoton Field (R. 6, 12 *et seq.)*, which required takers and purchasers of gas in said Field, as a condition precedent for such withdrawal from the common source of supply, to pay or attribute to all gas taken, except for the operations of leases, for all purposes including payment to producers, the minimum price of not less than eleven cents (11¢) per Mcf. on a 14.65 pounds psia. pressure base at the wellhead.

Within the time prescribed by statute, and on December 11, 1953, appellant duly filed with said Corporation Commission and caused to be served upon it its petition for a rehearing of said Commission's minimum gas price-fixing order (R. 30, 67 *et seq.)*. In such petition for a rehearing, appellant asserted it was a natural gas company as defined by the Natural Gas Act and said Corporation Commission had no jurisdiction or authority to issue said order as applied to the operations of appellant, as evidenced by the record (R. 30, 81). On December 16, 1953, said Corporation Commission entered its order denying appellant's said petition for a rehearing (R. 31, 87).

Promptly, and on January 14, 1954, within the time prescribed and as authorized by G.S. Kansas 1949, 55-606, 707, appellant as plaintiff instituted an action against said Corporation Commission as defendant in the District Court of Finney County, Kansas, attacking said minimum gas price-fixing order (R. 31-34, 88-97). In its petition filed

in said action, appellant, among other things, alleged that it was a natural gas company as defined in the Natural Gas Act and said Corporation Commission had no jurisdiction or authority to issue said minimum gas price-fixing order as applied to the operations of appellant, as evidenced by the record (R. 31-32, 33, 88, 92). The case was heard by the District Court of Finney County, Kansas, on April 26, 1956, taken under advisement, and on May 14, 1956, that Court entered its judgment upholding, sustaining, and affirming said minimum gas price-fixing order of the Commission as applied to the operations of appellant (R. 33, 97-99).

On May 19, 1956, appellant duly filed and served its notice of appeal to the Kansas Supreme Court for a review of specific Federal questions (R. 35-36, 101), namely,

1. The Corporation Commission was without jurisdiction or authority to promulgate and issue its said minimum gas price-fixing order as applied to sales of natural gas made by producers to appellant in the Kansas-Hugoton Field, after its production and gathering had ended, for transportation and resale in interstate commerce, for the reason that such sales are subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act (15 U.S.C.A. 717).

2. The Corporation Commission was without jurisdiction or authority to promulgate and issue its said minimum gas price-fixing order as applied to sales of natural gas at the wellhead in said Kansas-Hugoton Field, by producers to appellant, for transportation and resale in interstate commerce, for the reason that such sales are subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act (15 U.S.C.A. 717) (R. 3).

The Supreme Court of Kansas, as evidenced by its unanimous opinion, Smith, C.J., not participating, affirmed the judgment of the trial court upholding and sustaining said minimum gas price-fixing order of said Corporation Commission as applied to appellant (180 Kan. 454, 304 P.2d 528) (Appendix A hereto). The case is now before this Court based on the Federal question set forth *supra*.

THE FEDERAL QUESTION IS SUBSTANTIAL

The Supreme Court of Kansas, as disclosed by its opinion and decision in this case (Appendix A, pages viii-ix), concedes, as supported by the uncontradicted evidence in the record, that:

> "During all dates in question the Gas Company (Appellant), a natural gas company as defined in the Natural Gas Act, in its operations in the purchase of gas in the Kansas-Hugoton Field purchased gas from the producers delivered at the wellhead, also delivered at its pipeline in the field after production and gathering had ended. It had no production in the field and purchased therein all gas so obtained. Of the gas so purchased during the year 1951, 55.4 per cent was purchased at the wellhead and 44.6 per cent pipeline delivered in the field after production and gathering had been completed.
>
> "From what has been heretofore stated it appears that the sales of gas made by producers in the field to the Gas Company (Appellant), in the first instance after production had ceased and in the second after production and gathering had ended, were sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, in-

dustrial or other uses. It also appears from such record that after such sales had been completed the Gas Company (Appellant) placed such gas in its interstate integrated pipeline system and thereafter made resales thereof to at least some of the appellant Cities."

It, therefore, appears from the foregoing, when considered in connection with the entire opinion of the Court, Appellant's motion for a rehearing (R. 129), and the Court's denial thereof (R. 137), that the Kansas Supreme Court has decided and determined by its opinion, decision, and judgment that the State of Kansas, through its Corporation Commission, has power, jurisdiction, and authority notwithstanding the provisions of the Natural Gas Act (15 U. S. C. A. 717, 52 Stat. 821), to regulate "the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use", as an aid, where necessary, to put into effect and enforce the State's gas conservation statutes. As a matter of fact, prior to the Kansas Supreme Court's decision under attack in this appeal affirming the judgment of the District Court of Finney County, Kansas, upholding and sustaining the validity and enforceability of the 11 cents per Mcf. minimum gas price-fixing order of the Corporation Commission, such Court had affirmed and sustained in two cases the validity of an 8 cents per Mcf. minimum gas price-fixing order for the same Kansas-Hugoton Gas Field as applied "to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." *Kansas-Nebraska Natural Gas Company* v. *State Corporation Commission*, 169 Kan. 722, 222 P.2d 704, rehearing denied, 170 Kan. 341,

225 P.2d 1054, and *Columbian Fuel Corporation* v. *Panhandle Eastern Pipe Line Company*, 176 Kan. 433, 271 P.2d 773. It is, therefore, clear that the 11 cents per Mcf. price order of the Corporation Commission on the changed pressure base, upheld and sustained by the Kansas Supreme Court, has operated and will operate to increase the price of purchased gas to Appellant approximately 4 cents per Mcf. over and above the previously approved 8 cents per Mcf. price-fixing order of said Corporation Commission, and substantially over prices contained in subsisting gas purchase contracts of Appellant and other purchasers at the time said 8 cents per Mcf. price order became effective. It is thus apparent that Appellant has and will suffer a substantial financial detriment under said 11 cents per Mcf. price order of said Corporation Commission if the same is upheld and sustained by this Court.

An examination of the provisions of the Natural Gas Act (15 U. S. C. A. 717, 52 Stat. 821) and the decisions of this Court in *Natural Gas Pipe Line Company of America* v. *Corporation Commission of the State of Oklahoma* and *Natural Gas Pipe Line Company of America* v. *Panoma Corporation*, 349 U.S. 44, 99 L. Ed. 866, and *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, clearly disclose a direct conflict between the Kansas Supreme Court and this Court over the construction and interpretation of the Natural Gas Act as applied to the sales of natural gas in interstate commerce for resale, disclosed by the uncontradicted record in this case.

The Kansas Supreme Court, as evidenced by its opinion in this case (Appendix A, page I *et seq.*), has decided that

the sales of natural gas in interstate commerce for resale here involved fall within the exemption provisions of the Natural Gas Act [15 U. S. C. A. 717(b), 52 Stat. 821], but this Court in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 681, 98 L. Ed. 1035, 1037, said, among other things:

> "The cases discussed above supply a ready answer to the determination of the Commission *and also to petitioner's suggestion that 'production or gathering' should be construed to mean the 'business' of production and gathering, with the sale of the product considered as an integral part of such 'business.' We see no reason to depart from our previous decisions, especially since they are consistent with the language and legislative history of the Natural Gas Act*" (lc 681*).

With respect to the importance of the point in the field where the sales of natural gas in interstate commerce for resale are made, this Court said further on pages 682 and 684 respectively of its said opinion:

> "Rather we believe that the legislative history indicates a Congressional intent to give the Commission (Federal Power Commission) jurisdiction *over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company* * * * (lc 682). *Thus we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission system*" (lc 684).

This Court takes judicial notice of orders of the Federal Power Commission which are published in the Federa'

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* Emphasis is supplied by Appellant throughout statement

Register (44 U. S. C. A. 307, 49 Stat. 502). It, therefore, knows that the Federal Power Commission, pursuant to this Court's mandate in the case of *Phillips* v. *Wisconsin, supra*, has issued its series of No. 174 orders, whereby the Federal Power Commission is currently regulating such sales of natural gas as are here involved in this case. (Federal Register, Vol. 19, No. 141, p. 4534, published July 22, 1954; Federal Register, Vol. 19, No. 156, p. 5081, published August 12, 1954; Federal Register, Vol. 19, No. 243, p. 8807, published December 23, 1954.)

It is apparent, therefore, that the Federal Power Commission has interpreted this Court's decisions as giving it jurisdiction of sales of natural gas for resale in interstate commerce whether made at the wellhead or in the field after gathering of the gas by the producers has been completed. Other Federal Courts have interpreted the Natural Gas Act and this Court's decisions likewise. Compare *J. M. Huber Corp.* v. *Federal Power Comm.*, 236 F.2d 550, *certiorari denied* January 14, 1957, No. 600 (not yet officially reported).

From what has been said, it is very apparent there is a direct conflict between the decisions of this Court and the Supreme Court of Kansas over the interpretation of the Natural Gas Act, its application and the jurisdiction of the Federal Power Commission thereunder "*to sales in interstate commerce of natural gas for resale*" (15 U. S. C. A. 717[b], 52 Stat. 821) whether occurring at the wellhead or in the field after production and gathering have been completed.

In the recent cases of *Natural Gas Pipe Line Company of America* v. *Panoma Corporation et al.*, and *Natural Gas Pipe Line Company of America* v. *Corporation Commission of the State of Oklahoma et al.*, 349 U.S. 44, 99 L. Ed. 866, this Court had occasion to pass upon state minimum gas price-fixing orders similar to the one involved in this appeal. In such cases construing the Natural Gas Act, this Court said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, *that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one.*
>
> "We disagree with the contention of Appellees that *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U.S. 179, 95 L.Ed. 190, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 95 L.Ed. 204, are applicable here. *In those cases we were dealing with Constitutional questions and not the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases. Reversed.*"

It is submitted that the opinion, decision, and judgment of the Supreme Court of Kansas fails to recognize either the decisions of this Court interpreting the Natural Gas Act or the plain provisions of the Act itself and that the Court has failed further to take cognizance of and apply the provisions of the supremacy clause of the Federal

Constitution (Article VI, Clause 2), which this Court has many times said marks the course for State and Federal Courts to follow. *Case* v. *Bowles*, 327 U.S. 92, 102, 90 L. Ed. 552, 560; *Morris* v. *Jones*, 329 U.S. 545, 553, 91 L. Ed. 488, 497.

Appellant, therefore, firmly believes that, in the light of the foregoing, the question presented by this appeal is substantial and of the utmost public consequence.

Respectfully submitted,

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February, 1957

APPENDIX

APPENDIX "A"

No. 40,402

CITIES SERVICE GAS COMPANY, a Corporation, *Appellant*, v. STATE CORPORATION COMMISSION OF KANSAS, HARRY SNYDER, JR., Chairman, RICHARD C. BYRD and JOHN I. YOUNG, as Members of said Commission, and their respective successors in Office, *Appellees*.

No. 40,403

THE CITY OF BELOIT, KANSAS, and 145 Other Kansas Cities, (ANTHONY, ATCHISON, AUGUSTA, AXTELL, BALDWIN, BARNARD, BAXTER SPRINGS, BELLE PLAINE, BELLEVILLE, BLUE RAPIDS, BOGUE, BUFFALO, BUHLER, BURNS, BURR OAK, CEDAR VALE, CHAPMAN, CHERRYVALE, CHETOPA, CLAY CENTER, CLIFTON, COFFEYVILLE, COLWICH, CONWAY SPRINGS, COUNCIL GROVE, COUNTRYSIDE, DEARING, DIGHTON, DOWNS, EDGERTON, ELGIN, ELLINWOOD, ELLIS, EMPORIA, ENSIGN, ESBON, FORMOSO, FORT SCOTT, FOWLER, FRANKFORT, GALENA, GARFIELD, GARNETT, GEM, GHUDA SPRINGS, GIRARD, GLASCO, GOODLAND, GREAT BEND, GREENSBURG, GYPSUM, HADDAM, HALSTEAD, HANOVER, HAYS, HERINGTON, HILL CITY, HILLBORO, HOLTON, HORTON, HURON, INDEPENDENCE, IOLA, JETMORE, JUNCTION CITY, KANAPOLIS, KENSINGTON, KINGMAN, LAHARPE, LAWRENCE, LEAVENWORTH, LEBANON, LENEXA, LEROY, LINCOLN CENTER, LINDSBORG, LITTLE RIVER, LONGTON, LURAY, LYNDON, MCPHERSON, MACKSVILLE, MADISON, MAHASKA, MANKATO, MARYSVILLE, MERIDEN, MILTONVALE, MINNEAPOLIS, MORRILL, MULVANE, MUNDEN, MERRIAM, NARKA, NATOMA, NEODESHA, NESS CITY, NEWTON, NORCATUR, NORTON, OAKLEY, OSAWATOMIE, OSAGE CITY, PLAINVILLE, POMONA, PRAIRIE VILLAGE, PRATT, PRESTON, QUENEMO, RAMONA, RANTOUL, RESERVE, ROELAND PARK, ST. FRANCIS, ST.

[APPENDIX]

MARYS, SCAMMON, SCOTT CITY, SEDAN, SEDGWICK, SENECA, SHAWNEE, SILVER LAKE, STERLING, STOCKTON, SYLVAN GROVE, THAYER, TOPEKA, TORONTO, TURON, WA-KEENEY, WAMEGO, WASHINGTON, WATERVILLE, WAVERLY, WEIR, WELLINGTON, WESTMORELAND, WHITEWATER, WHITING, WILLIAMSBURG, WILSON, *Appellants*, v. STATE CORPORATION COMMISSION, ET AL., *Appellees*.

SYLLABUS BY THE COURT

1.

In Kansas, under legislation relating to the production and conservation of natural gas to prohibit waste (G. S. 1949, 55-701 to 55-713, incl.), the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state, and under such sections of the statute the power to prevent waste and conserve natural gas is vested in the State Corporation Commission.

2.

The provisions of the statute mentioned in the first paragraph of this syllabus give the State Corporation Commission power and authority to make an order fixing a minimum wellhead price for natural gas taken from a common source of supply, as a condition precedent for withdrawal of the gas from such common source of supply, when—as here—the evidence before the Commission warrants its conclusion such an order is necessary in order to prevent waste and to secure the relative rights of owners of real property from which such gas is produced from the common source of supply (Following *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722, 222 P. 2d 704).

3.

A conservation order of the State Corporation Commission, similar to the order referred to in paragraph two of the syllabus, construed as meaning that from and after

the effective date of such order no person, firm or corporation—first of all the producer—can lift or take gas in its natural state from the depths of the Hugoton Gas Field in Kansas to a point further than the wellhead without, as a condition precedent to its withdrawal, first attributing thereto the minimum price prescribed by the terms of such order.

4.

In the light of the facts of record and with the order construed as set forth in paragraph three of the syllabus it is held that such order falls squarely within the excluding provisions of the Natural Gas Act (15 U. S. C. A. § 717 [b]) providing that the terms of such Act do not apply to the production of natural gas.

5.

The record further examined, and it is *held*, that under the facts, conditions and circumstances set forth at length in the opinion, the trial court did not err in its judgment upholding and sustaining the order of the Commission as a lawful and reasonable order.

Appeal from Finney district court; ROLAND H. TATE, judge. Opinion filed December 8, 1956. Affirmed.

Mark H. Adams, of Wichita, and *Joe Rolston*, of Oklahoma City, Oklahoma, argued the cause, and *M. F. Cosgrove*, of Topeka, *D. B. Lang*, of Scott City, *Conrad C. Mount*, *O. R. Stites* and *Gordon J. Quilter*, all of Oklahoma City, Oklahoma, were with them on the briefs for the appellant Cities Service Gas Company.

Ralph W. Oman, of Topeka, argued the cause, and *Robert L. Webb*, *Philip E. Buzick*, *Robert A. McClure*, and *James D. Waugh*, all of Topeka, were with him on the briefs for the appellant Cities.

C. C. Linley, general counsel, State Corporation Commission, of Topeka, and *Dale M. Stucky*, special counsel, of Wichita, argued the cause, and *Howard T. Fleeson*, of

counsel, of Wichita, and *Don C. Smith*, special counsel, of Dodge City, were with them on the briefs for the appellees. The opinion of the court was delivered by

PARKER, J.: The present appeals, consolidated for purposes of review in this court, challenge the validity of an order of the State Corporation Commission (hereinafter referred to as the Commission) subsequently upheld in a review proceeding by the district court of Finney County, fixing a minimum price of eleven cents per thousand cubic feet, 14.65# p.s.i.a., at the wellhead, for all persons, firms or corporations taking gas or causing gas to be taken from the Hugoton Gas Field in Kansas on or after January 1, 1954.

The salient facts essential to a proper understanding of the issues involved will be related as briefly as the state of a lengthy record permits.

On August 18, 1952, the Southwest Kansas Royalty Owners Association, a corporation, and other individuals, commenced the proceedings by filing with the Commission a petition, alleging in substance that a previous minimum gas price order made by that body was no longer adequate to conserve and prevent waste of natural gas and protect correlative rights in its common source of supply in the Hugoton Field and requesting that, pursuant to authority conferred upon it by the provisions of G. S. 1949, 55-701 to 55-713, incl., the Commission set a minimum price, for such gas in such field, of not less than fourteen cents per M.c.f. measured on a pressure basis of 16.4 pounds per square inch or not less than twelve cents per M.c.f. measured on a pressure basis of 14.65 pounds per square inch.

Shortly after the commencement of the proceedings the appellants herein intervened and filed written protests. In its protest the Cities Service Gas Company (hereinafter referred to as the Gas Company) alleged that it was a foreign corporation, a natural gas company as defined in

the Natural Gas Act as amended (15 U.S.C.A. § 717), was engaged generally in the business of producing and purchasing natural gas for transportation and sale in interstate commerce for resale by means of an integrated pipeline system extending through several states and protested the granting of the relief sought by the petitioners on numerous grounds, the one here involved being that under the facts and circumstances currently existing in the Kansas-Hugoton Field, and operations of the protestant therein, the Commission had no jurisdiction or authority, either on application of petitioners or otherwise, to fix or determine either a minimum or other price for natural gas produced in and from such field. In their protest the appellants, the City of Beloit, Kansas, and the other Cities listed in the title of this opinion (hereinafter referred to as the Cities), alleged that they were interested parties because their inhabitants were purchasers, users and consumers of natural gas for divers domestic, household and industrial purposes and then, for purposes here in question, protested the granting of the relief sought by petitioners on grounds practically the same as those relied on by the Gas Company in its protest.

On December 2, 1953, effective January 1, 1954, the Commission, after hearings consuming approximately thirteen days, promulgated and issued a minimum value attribution and/or price order for the Kansas portion of the Hugoton Gas Field. For present purposes it may be said that the all important portion of such order reads:

> "That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954, 12:01 A.M., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease-owners and royalty owners, the fair and

reasonable minimum price of not less than eleven cents (11¢) per Mcf. (14.65# psia.) at the wellhead until further order or orders of this Commission."

By reference the Commission made a memorandum opinion a part of the foregoing order. This order is lengthy and in such form its averments cannot be readily summarized. However, it leaves no doubt and eliminates all confusion as to the purpose of the Commission in making the order and the grounds on which it based its action. For these reasons we attach a copy of such memorandum to this opinion as an appendix where it will be available for ready reference.

The Gas Company and the Cities each filed motions for rehearings. These were considered by the Commission and overruled. Thereupon such parties filed their separate actions for judicial review of the order of the Commission by the district court of Finney County, as authorized by G. S. 1949, 55-707, in the manner provided in G. S. 1949, 55-606. Ultimately these actions were consolidated for trial by such district court and heard together. What happened during the trial and the results thereof are best reflected in identical journal entries of judgment. With respect to such matters these journal entries, omitting three paragraphs thereof relating to motions to dismiss by the defendants the Commission and the three acting members thereof in their official capacity, not involved on appellate review, read:

"Now on this 26th day of April, 1956, this matter comes on duly for hearing and trial, the parties appearing by and through their respective counsel of record.

"Thereupon, in open court, the evidence is submitted to the court on the record of the proceedings had before the State Corporation Commission, on the abstracts, counter abstracts and supplements thereto,

filed herein by the parties, including the exhibits introduced in such proceedings."

* * * * * * * * *

"Thereupon, the court proceeded to hear further arguments to their conclusion and, the cause being fully submitted, took the case under advisement.

"Now on this 14 day of May, 1956, the court having given due consideration to all the evidence in the cause as aforesaid, the briefs and oral arguments of counsel, and being otherwise fully advised in the premises, finds:

"1. That the Order entered by the State Corporation Commission of the State of Kansas, one of the defendants herein, in its Docket No. 44,079-C (C-3216), Conservation Division, on the 2nd day of December, 1953, on review herein, was a lawful and reasonable order.

"2. That said Order here before this court on a petition for review should be upheld and sustained.

"IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that said Order entered by the State Corporation Commission of the State of Kansas, one of defendants herein, in its Docket No. 44,079-C (C-3216), Conservation Division, on the 2nd day of December, 1953, be and the same is hereby upheld and sustained, and that the costs of review in this court be and they hereby are assessed against the plaintiff."

Following rendition of the foregoing judgment the plaintiffs in the two actions, i.e., the Gas Company and the Cities, filed separate motions for a new trial. When these motions were overruled such plaintiffs perfected separate appeals which, upon reaching this court, were consolidated for purposes of hearing and argument on motion of the appellant Cities.

From what has been stated up to this point it might seem that many issues are involved on this appeal. Not so. It can be conceded that numerous issues were raised by the protesting appellants before the Commission and in the trial of the issues presented by their respective petitions for judicial review in the court below. However, the fact is that under their specifications of error and questions stated and argued in their briefs, which we pause to note are substantially the same and may hereafter be treated as identical in nature, the sole question presented on appellate review is, that in the light of the facts and circumstances of record, the Commission had no jurisdiction to issue the minimum value attribution and/or price order in question because the sole and exclusive jurisdiction to make such order is vested in the Federal Power Commission under the Natural Gas Act (15 U.S.C.A. § 717); and that all other issues raised below have been abandoned by appellants and are not here subject to review. Therefore we proceed on that basis, noting as we do so that such question will be disposed of without regard to reference made by the Commission in its brief and on oral argument to an interpretation of the involved order made subsequent to the date on which the rights of the parties were determined by the judgment rendered in the district court.

In approaching consideration of the foregoing question its disposition will be simplified by pointing out and directing attention to other facts and matters of record about which there can be little if any dispute. These, so far as appellants are concerned, may be stated thus.

During all dates in question the Gas Company, a natural gas company as defined in the Natural Gas Act, in its operations in the purchase of gas in the Kansas-Hugoton Field purchased gas from the producers delivered at the wellhead, also delivered at its pipeline in the field after production and gathering had ended. It had no production in the field and purchased therein all gas so obtained. Of

the gas so purchased during the year 1951, 55.4 per cent was purchased at the wellhead and 44.6 per cent pipeline delivered in the field after production and gathering had been completed.

From what has been heretofore stated it appears that the sales of gas made by producers in the field to the Gas Company, in the first instance after production had ceased and in the second after production and gathering had ended, were sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or other uses. It also appears from such record that after such sales had been completed the Gas Company placed such gas in its interstate integrated pipeline system and thereafter made resales thereof to at least some of the appellant Cities.

We now turn to facts and matters, more important to the Commission's position the judgment should be upheld, about which there can be no more controversy than there is respecting those last above stated.

In Kansas, under legislation enacted to control the production and conservation of natural gas and to prohibit waste (G. S. 1949, 55-701 to 55-713, incl.) the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state. See *La Harpe* v. *Gas Co.*, 69 Kan. 97, 76 Pac. 448, and *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, *infra*, and under the sections of the statute above cited, the power to prevent waste and conserve natural gas is vested in the State Corporation Commission.

In *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, 169 Kan. 722, 222 P. 2d 704, rehearing denied in 170 Kan. 341, 225 P. 2d 1054, which has never been repudiated and is still the law of this state, this court held that the Corporation Commission had authority to make an order fixing the minimum wellhead price for nat-

ural gas taken from a common source of supply if the evidence before it justified its conclusion that such order was necessary in order to prevent waste and to secure the relative rights of owners of real property from which gas is produced from a common source of supply. And commencing with page 728 of the opinion rejected a contention similar to the position assumed by appellants here that since Cities Service is engaged in the business of transporting natural gas in interstate commerce it is governed wholly by the Federal Natural Gas Act and therefore the Commission had no jurisdiction to make an order similar to the one presently involved.

The Order issued by the Commission in the instant case is substantially the same as the one involved in the last above cited case (169 Kan. 722), the only difference being that the present order raises the minimum value attribution and price of gas at the wellhead for the Hugoton Field, with some variation in pounds p.s.i.a., from eight cents to eleven cents per M.c.f. and expressly provides that all persons, firms or corporations which take gas or cause gas to be taken from such field shall pay or attribute such minimum value attribution or price *as a condition precedent for withdrawal from the common source of supply.* (Emphasis supplied.)

Finally it can be stated that, inasmuch as appellants have abandoned all questions involved in the court below except the jurisdictional one heretofore mentioned, we must and do assume, the evidence before the Commission was sufficient to sustain its findings to the effect the involved order, upheld and sustained by the trial court, was necessary and required in the interest of conservation and prevention of waste of gas in the Hugoton Field.

The parties are far apart in their construction of the Commission's order. On the one hand the appellants contend such order is a price-fixing order having application to sales of natural gas made by producers after its produc-

tion and gathering has ended. On the other the Commission contends it is purely a conservation measure, limited to production of gas from the common source of supply before cessation of production, which makes the minimum attribution price therein prescribed a condition precedent to the withdrawal of any natural gas whatsoever from such source. We are not inclined to labor arguments made by the parties respecting the construction to be given the order. It suffices to say, that after a careful analysis thereof, we have no difficulty in construing its terms to mean that no person, firm or corporation—first of all the producer—can lift or take gas in its natural state from the depths of the Hugoton Field to a point further than the wellhead without, as a condition precedent to its withdrawal from the common source of supply, first attributing thereto a minimum price of not less than eleven cents per M.c.f. (14.65# p.s.i.a.). So construed, recognizing as we must that under our own decisions (*Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission, supra; La Harpe* v. *Gas Co., supra)* as well as those of the highest court of the land (see, e.g., *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 81 L. Ed. 510, 57 S. Ct. 364; *Interstate Gas Co.* v. *Power Comm'n*, 331 U.S. 682, 91 L. Ed. 1742, 67 S. Ct. 1482; *Cities Service Co.* v. *Peerless Co.*, 340 U. S. 179, 95 L. Ed. 190, 71 S. Ct. 215; *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, 95 L. Ed. 204, 71 S. Ct. 221) the Commission has power to regulate the physical production and gathering of natural gas in the interest of conservation, including the protection of correlative rights and the prevention of waste, the involved order falls squarely within the hereinafter emphasized excluding provisions of the Natural Gas Act (15 U.S.C.A. § 717 [b]) which reads:

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-

gas companies engaged in such transportation or sale *but shall not apply* to any other transportation or sale, of natural gas or to the local distribution of natural gas or to the facilities used for such distribution *or to the production or gathering of natural gas.*" (Emphasis supplied.)

Thus, based on our construction of the order and since the Federal Act, as heretofore quoted, expressly provides that its terms shall not apply to the production of natural gas, it appears the trial court did not err in concluding the Commission's order should be upheld and sustained.

On the basis of what has been heretofore related, and without repeating it, we believe there is another sound reason for upholding the two judgments now under consideration. It is based in part on the doctrine of *stare decisis.* In *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission, supra,* in the face of facts and circumstances so similar as to afford no sound ground for distinguishing that case and the one at bar from a factual standpoint, we held that the Commission had power, authority and jurisdiction to enter an order substantially the same as the one here involved in the interest of conservation of gas in the Hugoton Field. In our opinion that decision, which is still the law of this state, is a controlling precedent and adherence to what is there said and held requires an affirmance of the instant judgments.

It may be conceded, as appellants suggest, that by reason of Article VI of the Constitution of the United States this court is controlled by the interpretation placed upon a Federal statute (in this case the Natural Gas Act) by the decisions of the Supreme Court of the United States and that this is true regardless of views of state courts even though such decisions are in conflict with their prior decisions. Indeed no court has been more observant of this principle than our own. See, e.g., *Amalgamated Meat Cutters, Etc.* v. *Johnson* 178 Kan. 405, 412, 286 P. 2d 182 and

Kaw Paving Co. v. *International Union of Operating Engineers*, 178 Kan. 467, 472, 290 P. 2d 110. So we come to the last question of importance.

In an attempt to avoid the force and effect of the conclusions, heretofore announced, appellants place great weight on three comparatively recent decisions of the Supreme Court of the United States, i.e., *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 98 L. Ed. 1035, 74 S. Ct. 794; *Natural Gas Co.* v. *Panoma Corp.* (decided together with *Natural Gas Pipeline Co.* v. *Corporation Commission of Oklahoma et al.*), 349 U. S. 44, 99 L. Ed. 866, 75 S. Ct. 578. Their claim in this respect is that in such decisions the Supreme Court of the United States has placed an interpretation upon the Natural Gas Act (15 U.S.C.A. § 717) contrary to our decision in *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission, supra*, and contrary to conclusions heretofore announced by us in this opinion. It suffices to say, that after analyzing them we are unable to concur in appellants' construction thereof and have reached the conclusion that the Per Curiam opinion in *Natural Gas Co.* v. *Panoma Corp., supra*, shows on its face that their construction of such decisions is unwarranted. So far as here pertinent the opinion in the case last cited reads:

> "*In these cases Oklahoma has attempted to fix a minumum price to be paid for natural gas, after its production and gathering has ended*, by a company which transports the gas for resale in interstate commerce. We held in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The *Phillips* case, therefore, controls this one." (Emphasis supplied.)

Here, as we have indicated, the Kansas Commission has fixed a minimum price to be paid for gas before cessation

of production. This fact in itself is sufficient to distinguish the decisions on which appellants rely and warrants our conclusion they are not to be regarded as controlling precedents.

Finally appellants contend that the trial court in rendering its judgment determined the price order in question applied to the operations of the Gas Company. We do not agree. Resort to its judgment, heretofore quoted, discloses that all it did was uphold and sustain the order of the Commission, aimed at curtailing production in the Hugoton Field and based expressly on the premise the Commission was not fixing a price for gas in the field but prescribing a minimum price for all gas at the wellhead as a condition precedent for withdrawals from the common source of supply in the interest of conservation.

One last point, not connected with the merits, requires our attention. The Commission has filed a voluminous counter abstract in two sections, claiming the amount paid for printing the entire counter abstract. Section I abstracts the evidence presented before the Commission at the hearing of the instant proceedings. Section II abstracts the evidence and proceedings before the Commission leading up to and resulting in our decision in *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission, supra.* The Gas Company has filed a motion claiming that due to the issue as limited in its abstract and brief the printing of this counter abstract was unnecessary, hence all costs incurred should be borne by the latter. Nothing would be gained by detailing the reasons responsible for our disposition of this motion. All that is required is to state our conclusion. It is that section I of the counter abstract was proper, while section II thereof was unwarranted. Therefore, since each section of the counter abstract is about the same size, we find that the Commission is entitled to make claim for only one-half of the amount expended for printing the counter abstract as costs of this proceeding.

The conclusions heretofore announced require that the judgments be affirmed.

It is so ordered.

SMITH, C. J., not participating.

APPENDIX "B"

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the matter of the application of certain royalty owners in the Hugoton Gas Field requesting orders as to a fixed price and measurement regulations in said Hugoton Gas Field.	)	DOCKET NO. 44,079-C (C-3216) Conservation Division

MEMORANDUM OPINION

BY THE COMMISSION:

Our position respecting the attribution of a minimum wellhead price for natural gas from a common reservoir is so patent that we do not propose here to elaborate extensively on the subject matter. In the Memorandum Opinion entered on February 23, 1949, in Docket No. 35,154-C (C-1868), we set out our views at length when Kansas was pioneering in adoption of a minimum wellhead price as a conservation measure for an important irreplaceable natural resource.

That the State has a right, in the interest of conservation, to fix a minimum wellhead price for natural gas in a common source of supply, if the evidence justifies the conclusion that such an order is necessary to prevent waste and protect correlative rights, is now settled law. (*Kansas-Nebraska Natural Gas Co. v. State Corporation Commission,*

169 Kan. 722, 222 P. 2d 704, and 170 Kan. 341, 225 P. 2d 1054; *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, 71 S. Ct. 221, 95 L. Ed. 204; *Cities Service Gas Company* v. *Peerless Oil and Gas Co.*, 340 U. S. 179, 71 S. Ct. 215, 95 L. Ed. 190.)

In the docket to which we have here referred, after protracted hearings we promulgated an interim order on February 18, 1949, establishing a minimum wellhead price of eight cents (8¢) per M.c.f. for gas in the Kansas portion of the Hugoton Gas Field. The eight-cent (8¢) figure prevails at this writing. In the Memorandum Opinion we said:

> "The evidence offered at the hearings in this proceeding is not sufficient to permit us to determine finally what a reasonable and fair minimum fixed price at the wellhead should be in the field."

By separate order on the same day we instituted our own investigation of prices being paid at the wellhead in the field.

By order of May 2, 1951, Docket 35,154-C (C-1868) and Docket C-164, the Commission closed that investigation assigning as reasons therefor in substance: that because of the long lapse of time resulting from litigation and the changes, meanwhile, in field conditions and development, and in marketing and conservation practices, much of the evidence at the hearing had become obsolete, lacked continuity and had become of questionable significance in determining a reasonable minimum price. We, however, said in that order:

> "If upon further consideration * * * it is deemed appropriate in the interest of conservation * * * to explore current factors and prevailing trends regarded as necessary in the determination of a minimum value other than 8 cents * * * the institution of a new investigation would be more feasible, beneficial and practical * * *."

The Commission never instituted a new investigation on its own motion, but it did use the instant docket for the purpose of making a very comprehensive and exhaustive study of the entire matter, allowing all persons having any possible interest in the matter, to present their evidence. Certain interests attempted to have the instant hearing limited to the period of time since March 1, 1949, the effective date of the Interim Order. The Commission, however, refused to so limit it and conducted the hearing as if the whole matter were being considered *ab initio*.

The history of these proceedings forcibly leads to the conclusion that we used in our Interim Order the very least possible minimum price then determinable and intimated that further study could well demonstrate that a higher minimum price was reasonable and necessary.

To disregard the preponderance of evidence before us now would in effect be finding that the eight-cent minimum price has accomplished in the prevention of waste all that any minimum price could accomplish and that no waste, physical, economic or other is now occurring in the field which any minimum price could prevent.

Before us is an application requesting a new minimum wellhead price for natural gas in the Kansas Hugoton Gas Field of fourteen cents (14¢) per M.c.f on a pressure basis of 16.4 pounds p.s.i.a. or in the alternative not less than twelve cents (12¢) per M.c.f. measured on a pressure basis of 14.65 pounds p.s.i.a.

Prior to the filing of the application on August 18, 1952, we had been giving informal consideration and study as to whether or not the adopted minimum wellhead price of eight cents (8¢) per M.c.f. in the field was efficacious. We have reached the conclusion that it is not.

The vastness and importance of the Hugoton Gas Field to Kansas requires our every-day attention. It must be remembered that the field, approximately sixty-five per

cent of which underlies nine southwestern Kansas counties, also extends into the states of Oklahoma and Texas. In February, 1948, the public records of this Commission disclose there were 985 wells in the Kansas portion of the field, whereas in November, 1953, there were 3,065, an increase of more than 300%, with more wells drilling. It is readily seen that there are ever-changing conditions in the field and conditions that exist now affecting conservation which were not conceivably involved in the hearings in 1948 relative to Docket No. 35,154-C (C-1868). With the greater number of wells in the field today, the public interest becomes all the more pronounced in the conservation of this precious fuel. We therefore are aware at all times of the realistic circumstances through which gas is withdrawn from the producing horizons of that field.

In this docket we have held extensive public hearings consuming twelve days and one night session. The transcript of these proceedings covers 2,284 pages and seventy exhibits were offered. The applicants produced an abundance of testimony as did certain of the protestants which included pipeline companies and representatives of gas consumers in the state. We have painstakingly reviewed the transcript of all the testimony and have arrived at the conclusion that the preponderance of evidence is that the prevailing minimum wellhead price in the Hugoton Gas Field is obsolete and that we should adopt a new wellhead price in the interest of protecting the public from dissipation of this irreplaceable natural resource, to carry out our statutory duties in the avoidance of waste and to protect correlative rights.

In this Memorandum Opinion, as we indicated, we do not intend to write a dissertation on the subject of minimum wellhead prices as conditions precedent for withdrawing gas from a common source of supply, but there are a few inescapable deductions that cannot be refuted which we wish to observe in passing.

The first deduction remains today, as was pointed out in our Memorandum Opinion of February 23, 1949, that gas is not truly competitive with the two other main fuels; namely, coal and oil. The cheapest and most efficient of the three fuels, gas is more convenient in more uses to the consumer than are the others. This is all borne out by the record. Gas is a commodity. Cheapness of a commodity is an avenue to ultimate waste. It is common knowledge that the records of every pipeline company and distributing company are replete with astonishing numbers of conversions from other fuels to natural gas where it is available.

Thus if the minimum wellhead price of natural gas is permitted to remain too low, effectiveness in achieving its objective as a conservaton measure is thwarted.

Second, it cannot be factually disputed that the Kansas portion of the Hugoton Gas Field is in closer proximity to the markets in the North, East and West; namely, Kansas, Colorado, Wyoming, Nebraska, South Dakota, Minnesota, Iowa, Missouri, Illinois, Indiana, Pennsylvania, Ohio and Michigan, than those portions lying in the other states which comprise the Hugoton Gas Field in its entirety. The essence of that fact is that the cost of the transportation of gas to these markets from Kansas is less than from either Oklahoma or Texas. If the minimum wellhead price of gas is lower, less the differential in transportation and other items, there exists clearly a violation of correlative rights and the resultant discrimination is conducive to waste for apparent reasons. Anyone familiar with the Hugoton Gas Field knows that situation prevails today. If such a situation continues to exist, it is obvious as a matter of economics that it will lead to earlier depletion of the Kansas wells, thus violating correlative rights and making disproportionate withdrawals possible.

Gas nearer the markets should command a higher price. Northern Natural Gas Company, a protestant here and a large taker from the field, is now paying a much

higher price for its Permian Basin (Texas and New Mexico) gas delivered to Skellytown, Texas; yet its markets are ir Minnesota, Iowa, South Dakota, Nebraska and Kansas. (Less than 4% in Kansas)

There is another observation that we wish to make. Certain of the protestants here have been under the impression that this was a rate case. That assumption is erroneous. Therefore, the testimony on behalf of these protestants is not germane to the issue of conservation. We conducted these proceedings as the gas conservation agency of the state under G. S. 1949, Chapter 55, Article 7, and not as the public regulatory body as provided by G. S. 1949, Chapter 66. Only one of the distributing companies in the state and three others which are both pipeline companies and distributing companies, participated in these proceedings. It is significant that neither of the two largest gas distributing companies in Kansas and others assumed that this was a rate case.

It is true that this Commission, as a public regulatory body, has rate-making authority within the state of Kansas but does not possess nor seek to possess jurisdiction over rates for the sale of natural gas in interstate commerce. The theory pointing to the arguments in the record respecting rates must be dispelled. In adopting a minimum wellhead price for the Hugoton Gas Field in Kansas, we look exclusively to the interest of the public in conservation.

All the factors which supported the eight-cent (8¢) minimum price in 1949 will, in the light of further consideration, support a higher minimum now.

Some inequities were corrected by the Interim Order, but others still exist. Some purchasing companies, after the minimum eight-cent order voluntarily adjusted their prices, even on old contracts, somewhat above eight cents. Others did not. That eight cents is not now a reasonable minimum price is evidenced by the fact that practically all new

contracts have been made at higher prices and many old contracts changed to more than eight cents.

Since the minimum eight-cent order in 1949, there has been a marked increase in the cost of development, an increase in the number of wells in the field, a change in the amount and nature of the demand for gas with an exceptionally great increase in the demand for space heating; additional pipelines have been built and new markets added.

It is an accepted fact that increase in storage fields has made pipeline companies less dependent on industrial loads to maintain good load factors; consequently there is less reason for extremely low prices to industries. As an illustration of this factor, Cities Service Gas Company, currently the largest taker from the field, has developed underground storage facilities extensively in Kansas. A recent development is the Colony Gas Field in Anderson County, Docket No. 44,080-C (C-3217). One of its large distributing companies, Union Gas System, Inc., has pioneered in underground reservoirs in southeastern Kansas, and now employs such facilities to augment its normal pipeline withdrawals. Other pipeline takers have underground storage space beyond the borders of the state or are in the process of acquiring such facilities.

And too, increase in source cost (price) of gas has not kept pace with increase in source prices of other fuels because owners of land and producers of gas have no freedom of contract.

The field has now developed to the extent that there is not enough undedicated acreage to warrant any new pipelines and no reason to expect any advance in price by reason of competition.

The evidence disclosed that wellhead prices of gas have been increased in Ohio, Texas, New Mexico, West Virginia, Oklahoma, the Gulf Coast area, and practically

all producing states and in relatively unimportant small fields.

As has been noted, we adhere to our conclusions in the Memorandum Opinion of February 23, 1949, in all respects except it is our position after study and research that today, under the prevailing conditions, the eight-cent (8¢) per M.c.f. minimum price adopted in 1949 is neither fair nor reasonable.

Finally, it is now fundamental and accepted that price is a dominant medium to conservation. We are not here fixing a price for gas in the field, a maximum price, a fair field price or a going price, but we are prescribing a minimum price for all gas, except for lease usage, of eleven cents (11¢) at the wellhead on a pressure base of 14.65 pounds p.s.i.a. *as a condition precedent for withdrawals from the common source of supply, in the interest of conservation.*

An appropriate order in conformance with the views heretofore expressed will be entered in this docket as of this day.

RAYMOND B. HARVEY
Raymond B. Harvey, Secretary

(SEAL)
Topeka, Kansas
December 2, 1953

APPENDIX "C"

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the matter of the application of certain royalty owners in the Hugoton Gas Field requesting orders as to a fixed price and measurement regulations in said Hugoton Gas Field.	)	DOCKET NO. 44,079-C (C-3216)
	)	CONSERVATION DIVISION

ORDER

Now on this 2nd day of December, 1953, the above-entitled matter comes before the Commission for further consideration and final disposition. The Commission, having examined the petition, files and record, and being fully advised in the premises, finds:

1. That the petition herein was filed by the Southwest Kansas Royalty Owners Association, a non-profit corporation, and certain individuals who are the owners of minerals in place or royalty interests in the Hugoton Gas Field, and that it is a petition for a new minimum wellhead price in said field of 14 cents per M.c.f. on a pressure basis of 16.4 pounds per square inch or in the alternative not less than 12 cents per M.c.f. measured on a pressure basis of 14.65 pounds per square inch.

2. That after due notice a public hearing was scheduled at the Allis Hotel, Wichita, Kansas, on September 26, 1952, at which time on motion of certain intervenors the matter was continued to October 20, 1952, in Topeka, and that hearings were held thereon at Topeka on October 20, 21, 22 and 23, 1952, December 15, 16, 17; 18 and 19, 1952, and January 14, 15 and 16, 1953.

3. That appearances were entered on behalf of the following: Southwest Kansas Royalty Owners Association

and certain individual petitioners by Howard T. Fleeson, Dale M. Stucky, both of Wichita, and A. E. Kraemer, Hugoton, their attorneys; Northern Natural Gas Company by its attorneys Lawrence I. Shaw, Omaha, Nebraska, and Mark Adams, Wichita; Panhandle Eastern Pipe Line Company by its attorneys Edward H. Lange, Kansas City, Missouri, Louis R. Gates, Kansas City, Kansas, and Mark Adams, Wichita; Cities Service Gas Company by its attorneys O. R. Stites, Sr., and Joe Rolston, both of Oklahoma City, Oklahoma, Mark Adams, Wichita, and O. R. Stites, Jr., of Topeka; Kansas-Nebraska Natural Gas Company by its attorneys James Conway, Hastings, Nebraska, and M. F. Cosgrove, Topeka; Kansas-Colorado Utilities by its attorney Harold Bolton, Abilene. Other appearances include: Consumers Cooperative Association, *et al.* by their attorney Phillip Dergeance, Lawrence; Lehigh Portland Cement Company by its attorney Frederick G. Apt, of Iola, and R. F. Jones; Coleman Company of Wichita by A. A. Knapp; the Office of Price Stabilization by its attorney Frank Theis of Arkansas City; the Eastern Kansas Gas Company of Iola, by J. H. Page and John McNally, both of Iola; Kansas Association of Municipal Utilities by its attorney Charles W. Lower, Kansas City, Kansas. That the following attorneys appeared on behalf of cities of Kansas as their respective city attorneys: James W. Wallace, Scott City; C. J. Brenneisen, Kansas City, Kansas; O. C. Jordan, Beloit; Casey Jones, Hill City; Corwin Spencer, Oakley; H. D. Oelschaeger, Plainville; Max Jones, Goodland; Sam W. G. Lowe, Colby; F. A. Sloan, Hoxie; Charles Stough, Lawrence and Fred W. Aley, Wichita; that James A. McClure, Robert L. Webb, Ralph W. Oman, all of Topeka, and Jerome M. Joffee of Kansas City, Missouri, [since deceased] appeared, representing a group of protesting cities. Jay Kyle, General Counsel and R. C. Woodward, Special Counsel, appeared for the Commission and the public generally. That the Commission has jurisdiction of the subject matter and of the parties.

4. That since the public hearings referred to in Finding No. 2, the Commission entered an order on May 20, 1953, in its Docket No. 34,780-C (C-1825) changing the definition of "Gas, Cubic Foot," as defined by Commission Rule 82-2-201 adopted December 24, 1947, and on file with the Revisor of Statutes pursuant to Laws 1947, Chapter 440. That said order made specific findings relating to the obsolescence of its former rule relating to "Gas, Cubic Foot," which was statewide in its application, and as a result thereof adopted a new definition of "Gas, Cubic Foot," pursuant to its statutory authority (G. S. 1949, Chapter 55, Article 7, as amended). That said definition applies to each and every gas field in the State of Kansas except those wells specifically prohibited from regulation by the proviso in G. S. 1949, 55-703, and applies to all withdrawals of gas in the State of Kansas since July 1, 1953, 12:01 a. m.; said rule as amended is currently on file with the Revisor of Statutes in accordance with G. S. 1949, 77-405 et seq.

5. That in Docket No. 35,154-C (C-1868) on February 18, 1949, the Commission promulgated an Interim Order, in which findings included *inter alia* that in the interest of conservation the fair and reasonable minimum price of natural gas at the wellhead in the Hugoton Field should be eight cents (8¢) per M.c.f., and that all takers of gas from said field would attribute thereto for purposes of payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of eight cents (8¢) per M.c.f. at the wellhead until further order of the Commission in the investigation instituted by it in Docket No. C-164.

6. That subsequent to the Interim Order dated February 18, 1949, Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company filed applications for judicial reviews thereof in the District Court of Finney County, Kansas, under the provisions of the Laws of 1945,

Chapter 233, Section 9; that likewise, under the same authority, Panhandle Eastern Pipe Line Company brought a similar action in the District Court of Seward County, Kansas; and that Cities Service Gas Company filed a complaint against the Commission in the United States District Court for the District of Kansas, which subsequently was dismissed by that company. The three cases in the state courts were consolidated for hearing before the District Court of Finney County sitting both in the capacity of Judge of Finney County District Court and Judge *pro tem* of Seward County District Court. From adverse decisions in the district courts, all three takers of gas (Kansas-Nebraska, Northern and Panhandle) took appeals to the Supreme Court of Kansas, which upheld the district courts and sustained the Commission's authority to establish the minimum wellhead price of eight cents (8¢) per M.c.f., (*Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722). The three appellants subsequently filed motions for rehearing which were denied by the Supreme Court, (*Kansas-Nebraska Natural Gas Co. v. State Corporation Co.*, 170 Kan. 341). Following the two Supreme Court decisions just referred to, the Commission in the original docket by appropriate order dated February 21, 1951, promulgated an implementing order to its Interim Order and later entered an Order Nunc Pro Tunc on March 8, 1951, in said docket, to correct an error in its order of February 21, 1951. The Commission, at the time it entered its Interim Order of February 19, 1949, wrote a Memorandum Opinion under date of February 23, 1949, which related some of the history of the field, the powers of the Commission and generally the Commission's jurisdiction over the conservation of this irreplaceable natural resource and the production of gas in the Hugoton Field of Kansas. It would be unnecessarily repetitious to set out here the contents of that Memorandum Opinion.

7. That the proceeding in this docket is not a rate matter

8. The Commission as of this date has entered in this docket a Memorandum Opinion which should be incorporated herein and made a part of this order by reference.

9. That because of the voluminous record and the widespread interest in the subject matter, not only in the interest of conservation and protection of correlative rights but also because of the possible effect the decision herein may have on certain classes of rates to consumers, we have felt impelled to re-examine the question of a reasonable minimum wellhead price structure in the Kansas Hugoton Gas Field which is now furnishing gas to more than one-fourth of the states of the Union.

10. It is not disclosed by the record before us that the eight-cent (8¢) price adopted by the Commission through its Interim Order of February 18, 1949, and now in effect, has had any adverse effect upon marketing or marketing conditions in the field or that it has adversely affected ultimate domestic consumer rates. Promulgation of a minimum price is a paramount factor in conservation and the protection of correlative rights. Having a low value in the stages of production, gas can be used uneconomically and wastefully because of the low commercial price being paid at the wellhead. That an important source of gas for the economy of not only Kansas but many other states is the Kansas portion of the Hugoton Gas Field; that gas is not now competitive with other fuels, namely, oil and coal; that the cheapness of gas is conducive to waste as prohibited by statute.

11. That conditions exist which, coupled with known differentials in transportation costs, adversely affect correlative rights.

12. Public records of this Commission clearly indicate that since February, 1948, the number of wells in the field has more than tripled, and that ultimate development of the field is rapidly approaching. All of this leads to the inevitable conclusion that withdrawals from the field are

nearing their peak, and also carries the warning that practices of conservation must be heightened if the public is to enjoy the fullest recovery of gas from the Hugoton Field.

13. A true stimulant to conservation is price, and a low price is conducive to waste which is specifically prohibited by G. S. 1949, 55-701. Experience in the Hugoton Field since 1949, the year of the first minimum wellhead order, has shown that a floor price in the interest of conservation supports the concept of conservation by economic uses and the avoidance of waste. It is apparent this can be best accomplished through a realistic minimum field price for this precious fuel.

14. Since price is a prime factor in avoiding various types of waste, strengthening that factor strengthens conservation in the Hugoton Field.

15. The minimum price of eight cents (8¢) per M.c.f. at the wellhead adopted by the Interim Order of February 18, 1949, is not now an effective conservation measure for the various reasons amplified in the Memorandum Opinion.

16. That a fair and reasonable minimum wellhead price to be attributed to all gas taken from the field, except gas used for lease operations, is in the public interest and welfare, encourages conservation, furthers the avoidance of discrimination and helps to promote orderly development and exploration.

17. That currently a fair and reasonable minimum price for gas at the wellhead in the Hugoton Field is eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

18. That all persons, firms or corporations which take gas or cause gas to be taken from the Kansas Hugoton Gas Field on and after January 1, 1954, 12:01 a.m., should be required, as a condition precedent for withdrawal from the common source of supply, to pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease

owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead.

19. That the petition herein should not be granted on either basis requested.

IT IS, THEREFORE, BY THE COMMISSION ORDERED: That the Memorandum Opinion entered herein this date be, and the same is, hereby incorporated and made a part of this order by reference.

IT IS FURTHER BY THE COMMISSION ORDERED: That the petition herein be, and the same is, hereby denied.

IT IS FURTHER BY THE COMMISSION ORDERED: That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954, 12:01 a.m., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead until further order or orders of this Commission.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

BY THE COMMISSION IT IS SO ORDERED.

RAYMOND B. HARVEY
Raymond B. Harvey, Secretary

(SEAL)

APPENDIX "D"

GENERAL STATUTES OF KANSAS, 1949.

Article 7. PRODUCTION AND CONSERVATION OF NATURAL GAS

55-701. Waste of natural gas prohibited. That the production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited.

55-702. Definitions. That the term "waste" as herein used, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic waste as used in this act, shall mean the use of natural gas in any manner or process, except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term "common source of supply" wherever used in this act, shall include that portion lying within this state of any gas reservoir lying partly within and partly without this state. The term "commission" as used herein shall mean the state corporation commission of the state of Kansas, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act.

55-703. Production regulations, rules and formulas. That whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly devolpment of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of

all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. In promulgating rules, regulations and formulas, to attain such results the commission shall give equitable consideration to acreage, pressure, open flow, porosity, permeability and thickness of pay, and such other factors, conditions and circumstances as may exist in the common source of supply under consideration at the time, as may be pertinent: *Provided, however,* That the daily takes of gas from any well shall not exceed 25 percent of its open flow: *Provided further, however,* That the provisions of this act shall not apply to any common source of supply in which the average open flow of all the producing wells therein is not in excess of seven hundred fifty thousand cubic feet per day.

55-703a. Well spacing and orderly development. The drilling and completion of a gas well shall not of itself entitle said well to an allowable for production; and the commission may, in its discretion, provide for well spacing in any such common source of supply and provide for the orderly development thereof.

55-704. Rules and regulations authorized; notice and hearings. The commission shall promulgate such rules and regulations as may be necessary for the prevention of waste

as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply, ascertaining the several factors entering into the determination of the productive capacity of each well, the total productive capacity of all wells in the common source of supply, the establishment of such other standard or standards as the commission may find proper to determine the productive capacity of each well and of all wells in such common source of supply, and as the commission may find necessary and proper to carry out the spirit and purpose of this act: *Provided, however,* That notice, as provided in section 8 (55-706) of this act, shall be served upon or given to the producers and purchasers of natural gas and all other persons, firms or corporations interested, of any hearing or hearings which may be called for the purpose of establishing any facts upon which any proposed rule or regulation may be based.

55-704a. Same; existing rules, regulations and orders; pending matters. All valid rules, regulations and orders of the commission, existing at the time this act takes effect and consistent with the provisions of this act, shall remain in force and effect unless revoked, changed or modified by the commission pursuant to the provisions of this act. All such rules, regulations and orders not consistent with the provisions hereof shall remain in force and effect, but only for such reasonable time as may be necessary for the commission to revoke, change, modify or make a substitute for the same in accordance with the provisions hereof. All future proceedings in matters validly pending before the commission at the time this act takes effect shall be in accordance with and pursuant to the provisions hereof.

55-705. Repealed, L. 1945, ch. 233, sec. 13.

55-705a. Certificate required; notice and hearing. Before any gas shall be produced from a well producing gas only, or from a well which is primarily a gas well, for any of the purposes specified in section 2 (55-702) of this act,

a certificate shall be obtained from the commission for the construction of the facilities necessary or required and/or the utilization of the gas in the manner and for the purposes intended; and the commission shall issue such certificate unless it finds, upon application and after hearing, that the contemplated production or use of such gas is in violation of this act: *Provided, however,* That no such certificate shall be required on account of such facilities as were in existence or under construction, or such uses as were being made of such gas, on February 1, 1945.

55-705b. Application; notice. No allowable shall be granted by the commission for any gas well except upon application duly verified setting forth the location of the well and the description of the acreage attributable thereto, the common source of supply in which the same is located and such other information as the commission may require. Upon the filing of any such application the same shall be duly docketed and notice thereof given in the manner and for the time provided in section 8 (55-706) of this act.

55-706. Proceedings upon petition. Proceedings may be instituted before the commission upon petition of any interested party or by the attorney general on behalf of the state, or on the motion of the commission, upon any question relating to the enforcement of this act or the promulgation, revocation, amendment, renewal, interpretation, extension, or the enforcement of any rule, regulation or order, or the determination of any right thereunder, in the manner provided in section 55-605 of the General Statutes of Kansas of 1935, as amended, and that each and all of the provisions of said section as amended, shall apply to and govern such proceedings under this act.

55-707. Actions for judicial review; appeals. That actions for judicial review of any rule, regulation, order or decision of the commission under the provisions of this act may be brought and proceedings respecting same shall be governed by and appeals may be taken as provided in

section 55-606 of the General Statutes of Kansas of 1935, as amended, and that each and all of the provisions of said section, as so amended, shall apply to and govern such actions arising under this act.

55-708. Penalties for violation. That in addition to any penalty that may be imposed by the state corporation commission, any person, firm or corporation, or any officer, agent or employee thereof, violating the provisions of this act, or valid order, rules or regulations of the commission shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding $500, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

55-709. Injunction and other remedies. That the state corporation commission shall have the right to maintain an action in any court of competent jurisdiction in this state to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy any valid rule, order, or regulation made by the state corporation commission or promulgated under the provisions of this act, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders, and regulations made and promulgated by the state corporation commission.

55-710. Receivership upon violation of act. That in addition to any penalty imposed under the provisions of this act, and to the remedy and relief heretofore set forth, any person, firm or corporation violating the provisions of this act, valid order, rules or regulations of the commissions shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state of Kansas through the attorney general, but such receivership shall only extend to the operating of producing wells and the marketing of natural gas under the provisions of this act.

55-711. Assessment of costs. The state corporation commission is hereby directed to tax and assess against the parties involved in any hearing or application the costs incurred therein, also all costs to the commission incurred in making the necessary investigations and the enforcement of its orders under this act, and divide such costs among the interested parties in such proportion as may be just and equitable.

55-712. Enforcement of act; agents. The commission is hereby authorized to employ or designate such agents as may in its judgment be necessary to enforce and administer the provisions of this act, and the rules and regulations and orders promulgated thereunder; such agents, with the exception of clerical help, to be experienced in and conversant with the business of the production of natural gas.

55-713. Invalidity of part. If any clause, sentence, section, provision, or part of this act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair, or affect the remainder of this act, which shall remain in full force and effect.

APPENDIX "E"

GENERAL STATUTES OF KANSAS, 1949.

55-606. Petition for rehearing; actions against commission; abstract to be filed; transcript; appeals to supreme court. Any action for judicial review of any rule, regulation, order or decision of the commission may be brought against the commission in the district court of any county in the state wherein the property affected thereby is located, or, if the property affected thereby is located in different counties, then the jurisdiction shall lie in either of such counties. Before any such action may be brought by a person who was a party to the proceeding resulting

in the making of a rule, regulation, order, or decision of the commission, a petition for rehearing shall first be filed with the commission within ten days from the date of the making of the rule, regulation, order, or decision in question. A rehearing shall be granted or denied by the commission within ten days from the date said petition is filed and if rehearing be not granted within ten days it shall be taken as denied. If rehearing be granted the matter shall be set for hearing as promptly as shall be convenient, and shall be determined by the commission within thirty days after the same shall be submitted. Such action may be brought by any person aggrieved, whether or not such person was the applicant for rehearing, within thirty days after the denial of the petition for rehearing, or, if rehearing is granted, then within thirty days after the final decision by the commission. If no petition for rehearing be filed, then any person aggrieved who shall not have been a party to any such proceeding before the commission may bring an action for the judicial review of any such rule, regulation, order, or decision of the commission at any time after ten days and within thirty days from the date of the making of such rule, regulation, order or decision. Any rule, regulation, order or decision of the commission may be superseded by the district court upon such terms and conditions as it may deem proper. All actions brought under this section shall have precedence in any court and on motion shall be advanced over any civil cause of different nature pending in such court, and such action shall be tried and determined as other civil actions. In any such action an abstract of the record of all evidence and proceedings before the commission shall be filed by the complaining party and a counter abstract may be filed by the commission or any other interested party. The district court may, when it deems it necessary and in the interest of justice, remand any such action to the commission with directions that the same be further investigated or additional evidence taken by the commission. After making

such further investigation or receiving such additional evidence the commission may change, modify or set aside the rule, regulation, order or decision in question, and if the party who instituted the action for review in the district court shall not be satisfied with such decision, then upon written request of any such party, the commission shall make a report of its further investigation and final decision and send a certified transcript of such additional evidence as may have been tendered by any party in interest to the district court and thereupon the district court shall proceed to hear and determine the action upon the complete record. The court shall not be bound by any finding of fact made by the commission. The authority of the court shall be limited to a judgment either affirming or setting aside in whole or in part the rule, regulation, order or decision of the commission. Appeals to the state supreme court may be taken from the judgment of the district court as in other civil actions. Nothing herein shall be construed in any manner to change, restrict, prohibit, or to deny to any person any of the usual equitable remedies.